

REMARKS

Election of Species Requirement

The Election of Species Requirement that was mailed on March 20, 2003, has been received and reviewed.

Three species of invention have been identified:

Species I: drawn to a rebreathing method that includes effecting a nonrebreathing period and effecting a rebreathing period;

Species II: drawn to a differential Fick technique that includes inducing a ventilation change and removing the change; and

Species III: drawn to evaluating respiration during a first and during a second state.

Notably, for purposes of the subject matter recited in the currently pending claims of the above-referenced application, the subject matter which is identified as Species I, a rebreathing technique, is a type of differential Fick technique, which is the subject matter to which Species II is drawn. Thus, as it applies to the subject matter recited in the currently pending claims, the subject matter Species I is a subset of the subject matter of Species II. Likewise, noninvasive differential Fick techniques, the subject matter to which Species II is drawn, require the evaluation of respiration during at least two different states, the subject matter to which Species III is drawn. Thus, with respect to the subject matter recited in the currently pending claims, the subject matter of Species II is a subset of the subject matter of Species III. As such, each claim that reads on Species I will also read on Species II and III, while each claim that reads on Species II will also read on Species III.

An election is hereby made, without traverse, to prosecute the invention of Species III.

It is respectfully submitted that each of claims 1-120 reads on Species III.

It is also submitted that independent claim 110 currently appears to be the most generic to Species III. It is also submitted that independent claim 110 currently appears to be generic to Species I and II.

Previously Submitted Information Disclosure Statements

Please note that Information Disclosure Statements were filed in the above-referenced application on March 20, 2001, and August 26, 2002, but that initialed copies of the Forms PTO-1449 that accompanied these Information Disclosure Statements have not yet been returned to the undersigned attorney. It is respectfully requested that the information cited in the Information Disclosure Statements and listed on the accompanying Forms PTO-1449 be considered and made of record in the above-referenced application and that initialed copies of the Forms PTO-1449 evidencing such consideration be returned to the undersigned attorney.

Preliminary Amendment

Also, a Preliminary Amendment was filed in the above-referenced application on June 18, 2001. The undersigned attorney has not, however, been provided with any indication that the Preliminary Amendment has been entered into the Office file for the above-referenced application. If, for some reason, the Preliminary Amendment has not been entered into the Office file, the undersigned attorney will be happy to provide a true copy thereof to the Office.

CONCLUSION

In view of the foregoing, it is respectfully requested that each of claims 1-120 be promptly considered on the merits.

Respectfully submitted,



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